

REQUEST FOR PROPOSAL

COUNTY of FRESNO

Project/Construction Management and Inspection Services for Juvenile Justice Campus Phase One Construction

SUBMITTAL: Six copies must be received on or before:
***Tuesday, January 15, 2002, 3:00 PM.**
(*Note: Date change from the Notice of Release)

ADDRESSED TO: Stuart G. Seiden
Capital Projects Division Manager
Department of Public Works
Fresno County Plaza
2220 Tulare Street, Sixth Floor
Fresno, CA 93721

MARK ENVELOPE: "PROPOSAL – Juvenile Justice Campus"

**PROPOSALS RECEIVED AFTER THE TIME AND DATE STATED ABOVE SHALL
BE RETURNED UNOPENED TO THE PROPOSER.**

INQUIRIES:

Direct questions or clarifications of Request for Proposal (RFP) documents to Claude D. Dechow, Senior Architect, Capital Projects Division, Department of Public Works, at (559) 262-4214 or fax (559) 262-4879.

CONSULTANT SELECTION POLICY:

Copies of the Fresno County Board of Supervisors Resolution 90—028 (Ordinance Code Chapter 4.10) which establishes procedures that implement the selection of Architects, Engineers, and other Professionals, may be obtained from Junso Ogawa, Staff Analyst (559) 262-4386, Capital Projects Division, Department of Public Works.

CONSULTANT INTERVIEWS:

Interviews of “short-listed” firms are tentatively scheduled for the afternoon of Friday, January 25, 2002. All firms submitting a proposal in response to this RFP shall be prepared to participate in the interviews on that date with minimal notice.

PRE-PROPOSAL CONFERENCE:

There will be a Pre-Proposal Conference on Wednesday, January 9, 2002 beginning at 2:30 PM in Conference Room 8-B (Eighth Floor), Fresno County Plaza, 2220 Tulare Street, Fresno, California 93721-2104.

If you plan to attend the Pre-Proposal Conference, please notify Junso Ogawa at (559) 262-4386 or e-mail jogawa@fresno.ca.gov.

ISSUANCE DATE: Wednesday, January 02, 2002

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I. SUMMARY

Fresno County has a new Juvenile Justice Campus project scheduled to begin construction in 2003 and be completed on or before September 19, 2006. Architectural schematics will be completed by February, 2002.

The Project/Construction Management Consultant will review plans and specifications; provide liaison with affected departments; and provide services from the design development phase through post construction.

On September 11, 2001, the Fresno County Board of Supervisors received an updated needs assessment of the Juvenile Justice System and approved development of master planning a new Juvenile Justice Campus south of the City of Fresno at the southwest corner of State Highway 99 and American Avenue to accommodate the County's current and projected Juvenile Justice needs. The 220-acre site is approximately 7 miles or about an 8-minute drive from downtown Fresno.

The campus will provide comprehensive probation, court, and correctional services, supplemented by programs provided by community-based organizations. The initial 240-bed pre-adjudicated detention unit proposed for partial funding through a 2002 Board of Corrections administered Federal Grant application is the first of many such facilities to be sited at this location. Grant funding, though desired, is not essential to build the initial phase. Other structures that are planned during the project's initial phase but may not be included under the grant application construction package include:

- An institutional core building housing an intake-release facility, property storage, campus administration and future medical and mental health unit needs.
- A courts building with 6 delinquency court rooms, court holding and office activity areas for court administrative services, the District Attorney, Public Defender, County Counsel, conflict defense and Probation court services.
- A central plant and institutional support warehouse and service yard.
- Public and staff parking lots and interior circulation roadways.
- Utility infrastructure support for the campus.

Detention housing is arranged in paired 15-bed podular tiered housing units with integrated classroom, program and medical spaces. Two 15-bed single story mental health units are also provided. Each 15-bed module is oriented around a large central day room and observed along unobstructed sight lines from a single unit central control. At the ground floor, each housing group has two structured individualized education centers and a large enclosed recreation yard which are visible from the unit's control center.

The housing unit design facilitates classification and segregation, maximizes management flexibility, optimizes program opportunities and encourages a wide variety of educational curricula. While planned for unit dining, the main day room space will also be used for large or multiple study groups and focused recreational activities. The flexibility of using the day room in combination with the fixed education centers and the housing unit common areas, will enable teaching staff to work in a variety of educational settings and thus, provide a broad spectrum of learning experiences ranging from that of the traditional structured classroom, to large and small specialized study groups, to individualized one-on-one tutoring.

Bulk food preparation will occur off-site at the County's Central Kitchen Facility, where a contract vendor will provide meals for both adult and juvenile facility programs. Prepared food will be sent to the facility in pre-heated/cooled thermal service carts. Upon reaching the facility, it is held in the food intake area at the institutional support building where it is brought to serving temperature before being distributed to the pantry areas within each housing group. Scullery functions for the housing unit are also provided within the Pantry area. All kitchen serving trays and utensils are re-washed and sterilized at the remote main kitchen prior to being reused.

The dedicated, hard-surfaced bonus recreation yard within each housing unit along with a large outdoor courtyard which has both turfed recreation and hard court surface areas, meets the requirement for juvenile group exercise areas and offers space for large muscle development activities, as well as other structured physical fitness activities. An indoor gymnasium and multi-purpose rooms will provide activity areas on inclement weather days. A media library, shared teacher's office, special education center, program storage, mechanical, janitorial and supply closets complete the support functions within the secured perimeter.

II. CONSULTANT SERVICES

- A. The Consultant shall provide a qualified Construction Manager, inspectors in various specialty disciplines (civil, mechanical, electrical, structural, architectural, etc) or inspectors qualified to inspect several or all disciplines, support staff, a field office (job trailers or rented office space with a minimum of 2880 s.f.), field office staff, conference room space for twenty-four (24) and all furniture and equipment including computers, printers, copiers, fax machines, pagers, cellular phones, telephone, 2-way radios, testing equipment and vehicles necessary to provide the needed services.
- B. The Construction Manager assigned by the Consultant shall have at least five years experience as the prime responsible party for the construction of at least two juvenile detention facilities, one of which shall be of similar size and

complexity. The Manager shall have prime responsibility for the duties described in the "CONSTRUCTION MANAGER'S DUTIES" and shall have a Bachelor of Science degree in Civil Engineering, Construction Management, Architecture or related field. Professional registration as an Architect or Engineer is desired but not required.

- C. The Consultant shall provide qualified inspectors to perform continuous on-site construction inspection. The inspectors shall report directly to and shall receive their assignments directly from the Construction Manager.
- D. The Consultant's Construction Manager shall participate in the Design Development and Construction Documents phases with the County and the consulting architect. The Consultant shall provide building project inspection services during the construction phase to monitor all construction activities including infrastructure improvements, off-site road improvements, site work, structural, architectural, mechanical, plumbing, electrical, landscape and other work as assigned. The inspector(s) shall verify and certify that all aspects of construction conforms with all applicable building codes, ordinances and the project plans and specifications. The inspector(s) shall monitor material application and methods of construction for quality assurance. The inspector shall have knowledge of Federal and California OSHA safety orders and procedures and shall alert the Construction Manager and Contractor of potential areas of concern that may cause liability exposure to the County. The Inspectors shall track and insure the Contractor is keeping accurate field installation documentation.
- E. Construction Inspectors must be certified by one or more of the following as applicable to the specialty work they are inspecting:
 - International Conference of Building Officials (ICBO) in Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code, and National Electrical Code, or as a Building Inspector.
 - Certified Level 'A' Inspector by the State of California Office of Statewide Health Planning and Development (OSHDP).
 - Department of the State Architect (DSA): Class I Certification.
 - Consideration will be given to American Construction Inspectors Association (ACIA) certification in Division II Building, but will be at the discretion of the County of Fresno.
- F. The County reserves the right to approve Construction Inspectors.
- G. The County requires a Construction Manager, project manager(s)/engineer(s) and clerical staff and be devoted to this project. They shall be available to the Department of Public Works, Architect and Construction Contractor each day the project is under construction. The Construction Manager shall be present

at the project site or at the field office, each day the project is under construction except for scheduled days for vacation and training as coordinated with the Construction Engineer. The Construction Manager shall schedule all staff, which may be full-time or part-time as determined by the construction work activity. The Consultant shall be responsible to provide professional supervision and adequate staffing at all times.

- H. The County will not accept a remote office, offsite project construction management, inexperienced staff, or insufficient personnel to adequately carry out the work.

III. CONSTRUCTION MANAGER'S DUTIES AND RESPONSIBILITIES

- A. The Consultant's Construction Manager shall participate in the Design Development and Construction Documents phases with the County and consulting architect. The consultant will be responsible to prepare a construction estimate near the completion of the Design Development phase. During the construction phase of the project, the Construction Manager shall assume primary responsibility for the performance of duties to achieve the successful completion of the project. The Construction Manager shall be the County Construction Engineer's representative for the project and be responsible for coordinating the efforts of contractors, architects, engineers, inspectors, testing laboratories, and other construction project service providers as well as coordinating and assuring proper approvals have been obtained for all contract change order work.

- B. The Construction Manager's duties shall also include responsibility for:

1. Plans & Specifications Review

Prior to advertising for bidding, the Construction Manager shall review, evaluate and critique the Architect's project plans and specifications for completeness, constructability, and contract administration. The construction manager shall prepare an estimate based upon the architect's plans and specifications that should reflect the anticipated costs of the project within the local region.

The Construction Manager's review for constructability does not transfer the Architect's responsibilities under its agreement with the County, as it may be amended, to the Construction Manager.

2. Liaison:

Receive, process and disseminate all communication among the County, inspectors, Architect and Contractors during the construction phase. The County includes the user departments, Department of Public Works, General Services Department.

3. Pre-Bid Conference:

Participate in pre-bid conference(s) with potential contractors, sub-contractors and County, to assist the Architect in clarifying any questions that may arise during the bidding process. Addenda shall be issued only by County.

4. Post-Bidding Evaluation

Assist the County in evaluating bids and bidders.

Review and evaluate details of Contractors' bid.

Review and evaluate Contractor's activity schedule.

5. Project Meetings:

Conduct pre-construction conferences with successful contractor and sub-contractors. Construction Manager shall also conduct weekly project meetings, or more often as needed, to discuss such matters as project coordination, quality control, progress problems, scheduling, costs, billings, procedures and equal employment opportunity. Summarize, record and distribute minutes of all meetings to all participants.

6. Construction Contract Change Orders (CCOs):

Review all requests for change orders and make recommendations to County concerning content, cost and extensions of time, if any.

Evaluate the cost features of all change orders and, when necessary, negotiate with the contractor to obtain a fair price for the work and make recommendations to the County. Prepare and process all change orders and supporting documentation in accordance with County standards and procedures. Process and obtain all reviews and approvals of all change order work from state and local reviewing agencies.

Recommend to the County and the architect necessary or desirable changes in the work or schedule.

7. Estimating:

In cooperation with the Architect and County, prepare cost estimates for additional work resulting from negligent errors or omissions in the Architect's construction documents or from County or contractor-requested changes in the work. Prepare estimates for all contractor-generated requests for changes in the work and/or material and equipment substitutions.

In cooperation with the Architect and County, revise and refine the approved estimates of construction costs, develop budget reports and forecasts as needed and maintain accurate cost accounting records.

8. Project Milestones:

Establish intermediate project milestones prior to bidding with the Construction Engineer, Capital Projects Division Manager and the architect for the Contractor to attain during the construction phase. These phases shall have time and liquidated damages associated with them if the Contractor does not attain them.

9. Contractor Claims Analysis:

Maintain detailed records of project progress for County's use in the analysis of potential contractor claims.

In the event any claim is made or any action brought during the term of the Consultant agreement in any way relating to the construction of the project, assist the County, including the preparation of written reports with supporting documentation in an effort to resolve the disputes.

Excluding direct disputes between County and Construction Manager, analyze and prepare written documentation on all disputed issues. Provide a detailed record of the circumstances and positions of the involved parties. Make recommendations for the settlement of claim issues.

10. Drawing Control System:

Establish a drawing control system which correlates all the drawings and specification sections, including change orders, addenda, clarifications and requests for information.

11. Document Clarification:

Review and pre-screen all RFI's for contract compliance and frivolous questions and information already included in the construction documents. Reject all illegitimate or incomplete Requests for Information (RFIs).

In cooperation with the Architect and County, prepare and/or monitor responses to contractor requests for information (RFI) and maintain a log and other records for all such requests.

12. Progress Reports:

Prepare monthly progress reports depicting the status of the work, financial status, cash flow requirements and a synopsis of known outstanding design and construction issues.

13. Records:

Maintain project records, including contract payment requests, contract change orders and their approvals, shop drawing submittal/approval logs, purchase orders, material purchase/delivery logs, equipment purchase/delivery logs, plan clarifications, requests for information, contract drawings and specifications with addenda, record documents, warranties and guarantees, system and equipment operating and maintenance manuals, daily and monthly progress reports, correspondence files, previous orders, payment request records, transmittal records, meeting minutes, inspection reports, bid information, lab test reports, punch lists, critical path and other project schedules and updates, and composite record drawings.

Construction Manager has no obligation to prepare any CPM schedule, cost loading schedules or the updating of them. Construction Manager's obligations with respect to such records is limited to the review, monitoring and documenting of project status and compliance.

The County shall furnish all documents related to the project and requested by the Construction Manager, except those documents withheld by the County for reasonable cause.

14. Shop Drawings, Materials, and Samples:

Review all submittals for completeness and contract compliance prior to forwarding to Architect for review. Reject all incomplete submittals. Assist Architect and Contractor in establishing and implementing procedures for processing, expediting, checking and coordinating submittals, shop drawings, samples, catalog cuts and other related data.

15. Progress Control Monitoring:

Observe the work of the Contractor and assist in coordination of the Contractor's work with the activities and responsibilities of the Architect in an attempt to complete the project in accordance with the County's objectives of cost, time and quality.

Monitor the progress of the project and compare with Contractor's progress schedule (CPM schedule) for actual progress and impact on the project and County. Submit written progress reports to the County containing information on the contractor's work, disputes, approved change orders, potential change orders, potential claims and the percentage of completion.

Review the contractor's progress control schedule and updates and submit to the County monthly reports on construction progress that include

current activities, proposed activities for the coming month, and identification of any known pending or anticipated problems.

Throughout the construction phase, review the construction progress and make recommendations, if requested, on potential ways and means the time schedule may be improved and options to avert material procurement delays.

16. Inspection and Quality Control:

Observe the work of Contractors for defects in materials and deficiencies in construction. Observe field testing and evaluate test results with Architect of Record. Report known deficiencies to the Contractor, Architect and to the County.

Coordinate the work of the inspectors, testing program and the preparation of inspection reports. Assist the inspector and Architect in maintaining the quality of materials and craftsmanship as required by the contract documents.

Coordinate regular monitoring and frequent inspection of work to determine progress and conformance with contract documents. Coordinate removal and replacement of defective installed materials and testing by Contractor.

17. Cost Control and Reports:

Maintain cost-accounting records of the work, the value of the work in-place, materials delivered and stored in accordance with contract requirements, construction grant cash flow requirements, and change order status. Prepare monthly reports depicting the financial status of the project as a function of completion, including analysis of actual versus budgeted costs, and status of construction contingency funds.

18. Contractor's Progress Payment:

Review and process all progress and final payment applications and make recommendations to the County for approval or rejection thereof.

Review project invoices. Recommend and submit to the County for payment. Maintain construction project cost accounting.

19. Daily Log:

Document all events occurring on the job site or connected with the progress of the project as is normally maintained on projects of similar size, scope and complexity. Coordinate the information so it is filed in one place and easily retrieved.

20. County's Consultants:

Assist the County in evaluating proposals for special surveys, testing services and special inspection as may be required.

21. Project Completion:

Assist the other Contractors and Consultants in the commissioning of systems and equipment, proper operations, testing and official start-up. Coordinate transfer of documentation to County General Services Department Building Maintenance and user Department staff.

Assist the County and the Consultants in determining final completion. Assist the Architect in assuring that all documents, guarantees, manuals, bonds are secured and turned over to the County.

Coordinate the final inspection and assist the Architect in the preparation of punch lists indicating the items of work remaining to be accomplished. Monitor the completion of the punch list items.

22. Miscellaneous:

Coordinate the flow of all documentation between Architect, Contractor, inspector and County, including submittals, claims and CCO's.

Prepare and present items to the Board of Supervisors as deemed necessary by County to keep the Board of Supervisors adequately informed.

Meet weekly with the County Construction Engineer or his/her designee to review project progress, problems and potential change orders.

IV. CONSTRUCTABILITY REVIEW

The Consultant shall perform a constructability analysis of the plans and specifications. The Consultant shall prepare a report outlining recommendations. The Consultant's designated Construction Manager shall participate in the constructability review at 90% construction document completion.

V. SERVICES BY THE COUNTY

Secure necessary reviews and initial permits for the project as identified below:

A. Building Permits

- B. California State Fire Marshall Approvals
- C. San Joaquin Valley Air Pollution Control Board Authority to Construct (emergency power generator(s) and boilers)
- D. Community Sewage Treatment Plant Review and Approvals
- E. Fresno Metropolitan Flood Control District Approvals
- F. Encroachment Permits
- G. Connection fees to any utility that will serve the site as part of the initial construction.

The Construction Division of the County of Fresno, Department of Public Works, will oversee and monitor the Consultant's agreement for this project and perform construction contract labor compliance functions.

Construction Division management will monitor the overall progress of project and will advise the Consultant as to the policies and procedures of Fresno County.

Construction Division management, in consultation with the Consultant and the Architect, will secure CCO approvals, process and make progress payments to the Construction Contractor, and prepare other administrative documents that may be required.

VI. ANTICIPATED PROJECT SCHEDULE

Construction Management Request for Proposal Submittal ..	January 14, 2002
Construction Management Interviews.....	January 18, 2002
Construction Management Agreement Approval	January 29, 2002
Value Engineering	February 1, 2002 – February 28, 2002
Constructability Analysis.....	February 20, 2003 – March 20, 2003
Advertise Project.....	April 18, 2003 – June 17, 2003
Award Project.....	August 25, 2003
Construction Dates	September 19, 2003 - September 29, 2005

VII. PROPOSAL SUBMITTAL REQUIREMENTS

- A. Submit no more information than requested by Part VII of this Request for Proposal. The completeness of the response to the RFP will be evaluated by a screening committee.

B. You must answer the following questions in the same sequence as below:

1. Firm name, address, phone and fax numbers, e-mail and website address.
2. Specify type or organization (individual, partnership or corporation) and, if applicable, indicate whether you are:
 - a. Small Business
 - b. Disadvantaged Business
 - c. Minority and/or Woman-Owned Business
3. Firm principals who will be responsible for the projects and their education, credentials and experience.
4. Key personnel including the Construction Manager, who will be assigned to work on the project and their education, credentials and experience. Include copies of the inspectors' certification documents.
5. Present staff - number and classification.
6. List in reverse chronological order for the last four years projects completed or under construction by the proposed Construction Manager.
7. Indicate for each of these projects:
 - Name of project
 - Project location
 - Brief description (type of construction, functional components)
 - Description of projects (square footage, number of stories or floors)
 - Name of owner
 - Name of owner's contact person and telephone number (Contact person who, at the time of RFP submittal, will be employed by the owner)
 - Value of building or structure
 - Status of completion
8. List at least four additional references of the Construction Manager of present or past clients, with their telephone numbers. Identify specifically the client person and position reported to by the Construction Manager.
9. Include, if available, a current copy of Standard Form 254 "Architect-Engineer and Related Services" Questionnaire.
10. The Consultant shall submit, as a part of his or her initial submittal, the firm's current basic hourly rate schedule for all employee classifications pertinent to this project's scope. The rates shall be for the construction period shown in Section VI. Such hourly labor rates shall include all costs

to be incurred including costs for site items such as office supplies, printing, postage, vehicle costs, all job site office furnishings and equipment, and other incidentals. As part of the rate schedule identified above, please include hourly rates for: services provided between the hours of 6:00 p.m. and 5:00 a.m. (defined as beyond normal working hours); and services provided on weekends and County holidays.

VIII. CONSULTANT SELECTION PROCEDURE

- A. The selection procedure shall be in accordance with Fresno County Ordinance Code Chapter 4.10 and applicable provisions of the "Policy for Selection and Compensation of Architectural/Engineering Consultants" as last revised by the Board of Supervisors on November 29, 1994. The procedure includes the following provisions:

A project Selection Committee will be formed to evaluate the proposals and to make recommendations to the Fresno County Board of Supervisors.

The Selection Committee will consist of management employees from the user Department, Department of Public Works, County Administrative Office, and may include a representative knowledgeable in architectural/engineering/construction management services from outside the community or from one of the universities. The Selection Committee will screen the responses to the RFP and may select three or more firms as finalists. More firms will be considered as finalists when, in the judgment of the Selection Committee, other firms are equally qualified to provide the requested professional services. Finalists will be requested to interview with the Selection Committee as a part of the evaluation process. The finalist's Construction Manager shall attend the interview and respond to questions from the Selection Committee.

After the finalist firms have been identified and as a part of the Selection Committee's evaluation at interview time, the finalist firms will be required to submit at the conclusion of the interview an estimated fee proposal to provide professional services for the project. The finalist firm's estimated fee proposals will be opened only after the Selection Committee has completed all of the interviews and considered each of the finalist's qualifications. The Selection Committee will consider the estimated fee proposals in its final deliberations.

The Selection Committee will address the following criteria in its evaluation of proposals (not necessarily in order of importance). Items with an asterisk (*) may not apply. You may submit responses to these items if you so desire.

- Consultants who have construction managers with experience with California juvenile detention and/or administrative facilities is desired. Preference will be given to applicants with prior experience in the construction management, quality assurance and quality control of these types of projects.
- B. Educational background of the Consultant's key individuals who will be assigned to the project on a full-time basis.
 - C. Quality of past performance for the County or similar agencies.
 - D. Qualifications of individuals within the Consultant's organization directly responsible for the work. The County reserves the right of approval of the Consultant's Construction Manager and inspector(s).
 - E. Adequacy of staff to perform the work within the time allowed.
 - F. Approach proposed for solving this project's potential construction problems and project requirements.
 - G. *Demonstrated ability to make effective public presentations on the requested reports and construction and management activities.
 - H. Demonstrated ability to work effectively with County staff, other public agencies and related parties.
 - I. *New or innovative ideas presented by the Consultant in the proposal or presentations.
 - J. Demonstrated ability to keep costs within project budgets and design estimates.
 - K. Knowledge of local conditions.
 - L. Demonstrated interest of the Consultant in the success, efficiency, and workability of facilities during construction and after they are placed in operation.
 - M. Is the Consultant is currently engaged in another project which has direct and substantial physical relationship to the proposed project.
 - N. Demonstrated knowledge of cost containment procedures or detailed knowledge of similar facilities and concepts that may apply to this facility.
 - O. Demonstrated record of abiding by terms of subcontract agreements regarding timely payment for services rendered on County projects.

- P. *Ability of the Consultant to furnish effective and timely construction observation services.
- Q. Completeness of proposal
- R. The estimated fee proposal will be a factor in the final selection only after the most qualified firms have been identified.
- S. All other things being equal, local (within Fresno County) consultants are preferred over non-local Consultants.
- T. All things being equal, a local consultant or a non-local consultant with an existing local office or a non-local consultant associated with a local consultant is preferred to a non-local consultant.

IX. FEE PROPOSAL

- A. In order for the County to make a fair comparison between Consultant's fee proposals, Consultant shall detail their fee proposal as specified below. Do not deviate from the requested information. Each proposer may provide options for the committee to entertain to increase or reduce the scope of the work.

All costs that can reasonably be estimated from the proposer's experience and the project description and duration shall be included in the fee proposal.

The County reserves the right to use the Consultant's fee and the various cost components, (Construction Manager, inspectors, office and office staff rates) to make a fair comparison of the various Consultant's fee proposal.

In order for the County to fully evaluate the Consultants fee proposal, it must be structured so the County can determine the duration of each cost component. For example, the Consultant may estimate that a general construction inspector is needed full time starting two months prior to construction and ending one month after construction is complete; and mechanical, electrical and structural inspectors are needed for six months each during the project. The fee proposal must break out the inspection cost in this manner showing type of inspector, duration of inspector on the job and cost of the inspector.

NOTE: Testing, including welding inspectors, concrete testing, compaction testing, etc., shall be made a part of the Consultant's contract as an extra service. The Consultant will be responsible for soliciting proposals for the work from qualified firms.

Payments to the Consultant during the construction phase shall be proportional to the percentage of completion of the contractor.

B. COST COMPONENTS OF FEE PROPOSAL**1. CONSTRUCTION MANAGER:**

Estimated cost and duration for the Construction Manager for the construction period of the project plus four months.

The Construction Manager shall schedule staff so the work is accomplished during each phase of the project.

Itemize the Construction Manager's costs. The Construction Manager's cost shall consist of all Construction Manager expenses including, but not limited to, vehicle expenses.

Compensation for travel time or vehicle expense incurred by the Construction Manager shall be included as part of the fee proposal.

During the Design Development and Construction Documents phases, assume a meeting every four (4) weeks plus an additional six (6) meetings per phase.

The fee for the Construction Manager shall be divided into the following sub-components:

- Design Development and Construction Documents Phases
- Bidding and Construction Phases
- Post-Construction Phase

2. CONSTRUCTION OFFICE:

The construction office (trailer or rented space) and office equipment shall be for a duration beginning four months prior to project award and conclude two months after filing of the Notice of Completion. Costs for the construction office shall be all inclusive including, but not limited to, mobilization, demobilization, utilities, office equipment (phone, photocopier, fax, network, computers, etc.), and office services and supplies. The duration of construction is specified in Section VI of this proposal.

3. OFFICE AND INSPECTION STAFF:

The consultant shall identify separately the person-hours of all office staff and the cost; and the person-hours of inspection staff and the cost. Break down the costs by individual position, such as: secretary, project

manager/engineer, general inspector, mechanical inspector, electrical inspector, etc. Show the estimated duration of each individual. Apply prevailing wage rates to the appropriate positions.

4. PROFESSIONAL LIABILITY INSURANCE:

The cost of \$1 million Professional Liability Insurance in accordance with Section XI of Exhibit A shall be identified separately in the Fee Schedule.

5. CONSTRUCTABILITY REVIEW:

The Consultant shall include a cost for a constructability review and report of the project. The Consultant's designated Construction Manager shall participate in the review.

X. BACKGROUND INVESTIGATION

The County reserves the right to conduct a background inquiry of each proposer that may include the collection of appropriate criminal history information, contractual and business associations and practices, employment histories, and reputation in the business community.

XI. SITE VISITATION

Site visitations may be arranged by calling the Construction Engineer, Assistant Construction Engineer, or the Building Projects Supervisor at (559) 262-4154.

XII. CONFLICT OF INTEREST

The proposers should be aware that the selected Consultant(s) must comply with requirements of the Fresno County Department of Public Works Conflict of Interest Code. (Exhibit B)

XIII. EXHIBITS

Exhibit A: Typical Agreement Clauses

Exhibit B: Conflict of Interest

SGS/cdd/jo

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TYPICAL AGREEMENT CLAUSES

I. COMPENSATION RECORDS

The CONSULTANT shall keep complete records showing the hours and description of activities performed by each person who works on the project and all associated costs or charges applicable to work covered by the Basic Fee and approved Extra Services. The CONSULTANT will be responsible for all sub-consultants keeping similar records.

II. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

[The following Paragraph applies to HUD/CDBG Projects only] The CONSULTANT shall establish accounting and bookkeeping practices including, but not limited to, employee time cards, payrolls, and other records of transactions to be paid from State Grant and Federal Grant (HUD/CDBG) funds.

A. The CONSULTANT shall at any time during regular business hours, and as often as the COUNTY may deem necessary, make available for examination by [Federal or State authorities, or] the COUNTY Auditor-Controller/Treasurer-Tax Collector, or their authorized representatives, all of CONSULTANT's records and data with respect to matters covered by this Agreement. The CONSULTANT shall permit [Federal, State, or] COUNTY authorities to audit and inspect all invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to matters covered by this Agreement.

B. The CONSULTANT shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under this Agreement (Government Code Section 8546.7)

III. ERRORS OR OMISSION CLAIMS AND DISPUTES

A. Definitions:

1. A "Consultant" is a duly licensed Architect or Engineer, or other provider of professional services, acting as a business entity (owner, partnership, corporation, joint venture or other business association) in accordance with the terms of an Agreement with the COUNTY.

1 2. A "Claim" is a demand or assertion by one of the parties seeking, as a matter of right,
2 adjustment or interpretation of contract terms, payment of money, extension of time, change orders,
3 or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes
4 and matters in question between the COUNTY and CONSULTANT arising out of or relating to the
5 contract. Claims must be made by written notice. The provisions of Government Code section 901,
6 et seq., shall apply to every claim made to COUNTY. The responsibility to substantiate claims shall
7 rest with the party making the claim. The term "Claim" also includes any allegation of a negligent error
8 or omission by the CONSULTANT.

9 B. In the spirit of cooperation between the COUNTY and CONSULTANT, the following
10 procedures are established in the event of any claim or dispute by the CONSULTANT or the COUNTY
11 alleging a negligent error, act, or omission.

12 1. Claims, disputes or other matters in question between the parties, arising out of or
13 relating to this Agreement, shall not be subject to arbitration, but shall be subject to the following
14 procedures.

15 2. The Capital Projects Division Manager of his/her representative of COUNTY and
16 CONSULTANT shall meet and confer and attempt to reach agreement on any dispute, including what
17 damages have occurred, the measure of damages and what proportion of damages, if any, shall be paid
18 by either party. The parties agree to consult and consider the use of mediation or other form of dispute
19 resolution prior to resorting to litigation.

20 3. If the COUNTY and CONSULTANT cannot reach agreement under [Article xxx,
21 Section xxx, Paragraph xxx] the disputed issues may, upon concurrence by all parties, be submitted to
22 a panel of three (3) for a recommended resolution. The CONSULTANT and the COUNTY shall each
23 select one (1) member of the panel, and the third member shall be selected by the other two panel
24 members. The discovery rights provided by California Code of Civil Procedure for civil proceedings
25 shall be available and enforceable to resolve the disputed issues. Either party requesting this dispute
26 resolution process shall, when invoking the rights to this panel, give to the other party a notice

1 describing the claims, disputes and other matters in question. Prior to twenty (20) days before the
2 initial meeting of the panel, both parties shall submit all documents such party intends to rely upon to
3 resolve such dispute. If it is determined by the panel that any party has relied on such documentation,
4 but has failed to previously submit such documentation on a timely basis to the other party, the other
5 party shall be entitled to a twenty (20) day continuance of such initial meeting of the panel. The
6 decision by the panel is not a condition precedent to arbitration, mediation or litigation.

7 4. Upon receipt of the panel's recommended resolution of the disputed issues, the
8 COUNTY and the CONSULTANT shall again meet and confer and attempt to reach agreement. If the
9 parties still are unable to reach agreement, each party shall have recourse to all appropriate legal and
10 equitable remedies.

11 C. The procedures to be followed in the resolution of claims and disputes may be modified at
12 any time by mutual agreement of the parties hereto.

13 D. The CONSULTANT shall continue to perform its obligations under this Agreement pending
14 resolution of any dispute, and the COUNTY shall continue to make payments of all undisputed amounts
15 due under this Agreement.

16 E. When a claim by either party has been made alleging the CONSULTANT's negligent error,
17 omission or negligent act, the COUNTY Project Manager and the CONSULTANT shall meet and
18 confer within twenty-one (21) days after the written notice of the claim has been provided.

19 IV. JOINDER OF PARTIES

20 The CONSULTANT, the CONSULTANT's consultants of any tier, subcontractors of any tier,
21 suppliers and construction lenders shall all be bound by the dispute resolution provisions of this
22 Agreement, and immediately upon demand of COUNTY or CONSULTANT, shall participate in and
23 shall become parties to the dispute resolution process, provided they have signed any document that
24 incorporates or refers to the dispute resolution provisions of this Agreement. Failure, whether intended
25 or inadvertent, of CONSULTANT to ensure that such nonparties have signed such a document shall
26 inure only to CONSULTANT's detriment, if any there be. COUNTY shall not suffer a detriment by

1 CONSULTANT's action or inaction in this regard. If such a party after due notice fails to appear at
2 and participate in the dispute resolution proceedings, the panel established in accordance with the
3 provisions of [Article xxx, Section xxx, Paragraph xxx] shall make a decision based on evidence
4 introduced by the party or parties who do participate.

5 V. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS

6 A. The CONSULTANT will review and analyze construction contract claims and recommend
7 resolution of them as soon as possible following receipt of demand by COUNTY.

8 B. Within a reasonable time after receipt of a claim, the CONSULTANT shall provide a
9 written analysis of the claim to the COUNTY, signed by the CONSULTANT and any affected sub-
10 consultants. The written analysis shall include the CONSULTANT's professional opinion of the
11 responsibility for payment of the claim, with supporting facts and documentation. A copy of the written
12 analysis shall be provided to the respective insurance adjusters for CONSULTANT and any affected
13 sub-consultant.

14 C. Upon receipt of a claim, the CONSULTANT may also take one (1) or more of the
15 following actions, within ten (10) days of receipt of a claim:

16 1. Request additional supporting data from the claimant, requiring that such data be
17 supplied within ten (10) days of the request;

18 2. Submit a schedule to the parties indicating when the CONSULTANT expects to
19 respond to the claim, which schedule shall not exceed thirty (30) days from CONSULTANT's original
20 receipt of the claim;

21 3. Recommend rejection of the claim in whole or in part, stating the reasons for such
22 rejection;

23 4. Recommend approval of the claim by the other party, or

24 5. Suggest a compromise.

25 D. In every case, resolution of a claim shall not exceed thirty (30) days from the original receipt
26 of claim, unless the CONSULTANT obtains COUNTY's prior written approval.

1 VI. INDEPENDENT CONTRACTOR:

2 A. In performance of the work, duties, and obligations assumed by CONSULTANT under this
3 Agreement, it is mutually understood and agreed that CONSULTANT, including any and all of
4 CONSULTANT's officers, agents and employees, will at all times be acting and performing as an
5 independent contractor, and shall act in an independent capacity and not as an officer, agent, servant,
6 employee, joint venturer, partner or associate of the COUNTY. Furthermore, COUNTY shall have
7 no right to control or supervise or direct the manner or method by which CONSULTANT shall perform
8 its work and function. However, COUNTY shall retain the right to administer this Agreement so as
9 to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions
10 thereof. CONSULTANT and COUNTY shall comply with all applicable provisions of law and the
11 rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject
12 thereof.

13 B. Because of its status as an independent contractor, CONSULTANT shall have absolutely
14 no right to employment rights and benefits available to COUNTY employees. CONSULTANT shall
15 be solely liable and responsible for providing to, or on behalf of its employees all legally-required
16 employee benefits. In addition, CONSULTANT shall be solely responsible and save COUNTY
17 harmless from all matters relating to payment of CONSULTANT's employees, including compliance
18 with Social Security, withholding, and all other regulations governing such matters. It is acknowledged
19 that during the term of this Agreement CONSULTANT may be providing services to others unrelated
20 to the COUNTY or to this Agreement.

21 VII. COMPLIANCE WITH LAWS:

22 CONSULTANT shall comply with all applicable Federal, State, and local laws, ordinances,
23 regulations, and Fresno County Charter Provisions in effect at the time of CONSULTANT's
24 performance of the professional services are provided hereunder.

25 [CDBG Paragraph: CONSULTANT shall also comply with current rules and regulations
26 established pursuant to the federal Housing and Development Act of 1974 and its amendments

1 including, but not necessarily limited to, those requirements listed in Exhibit ___, attached hereto and
2 incorporated herein.]

3 VIII. GOVERNING LAW:

4 A. Any controversy or claim arising out of or relating to this Agreement which cannot be
5 amicably settled without court action shall be litigated either in a state court for Fresno County,
6 California, or in the U.S. District Court for the Eastern District of California, located in Fresno County.

7 B. The rights and obligations of the parties and all interpretations and performance of this
8 Agreement shall be governed in all respects by the laws of the State of California.

9 IX. CONSULTANT'S LEGAL AUTHORITY:

10 [FOR CALIFORNIA CORPORATIONS:] Each individual executing this Agreement on behalf
11 of CONSULTANT hereby covenants, warrants, and represents: (i) that he or she is duly authorized
12 to execute or attest and deliver this Agreement on behalf of such corporation in accordance with a duly
13 adopted resolution of the corporation's board of directors and in accordance with such corporation's
14 articles of incorporation or charter and bylaws; (ii) that this Agreement is binding upon such
15 corporation; and (iii) that CONSULTANT is a duly organized and legally existing corporation in good
16 standing in the State of California.

17 [FOR CALIFORNIA PARTNERSHIPS:] Each individual executing this Agreement on behalf
18 of CONSULTANT hereby covenants, warrants, and represents: (i) that he or she is duly authorized to
19 execute and deliver this Agreement on behalf of such partnership in accordance with its Partnership
20 Agreement; and (ii) that this Agreement is binding upon such partnership; and (iii) that CONSULTANT
21 is a duly organized and legally existing partnership in the State of California.

22 [FOR OUT OF STATE CORPORATIONS:] Each individual executing this Agreement on
23 behalf of CONSULTANT hereby covenants, warrants, and represents: (i) that he or she is duly
24 authorized to execute and deliver this Agreement on behalf of such corporation in accordance with a
25 duly adopted resolution of the corporation's board of directors and in accordance with such
26 corporation's articles of incorporation or charter and bylaws; (ii) that this Agreement is binding upon

1 such corporation; (iii) that CONSULTANT is duly organized and legally existing corporation in good
2 standing in the State of _____, is registered with the California Secretary of State to do business
3 in the State of California as a foreign corporation, and; (iv) that each individual executing or attesting
4 this Agreement on behalf of CONSULTANT hereby covenants, warrants, and represents: (i) that this
5 Agreement is binding upon such corporation; and (ii) that CONSULTANT shall deliver to COUNTY
6 all necessary certificates and assurances indicating CONSULTANT's right to conduct business in the
7 State of California including but not limited to certificates filed with the California Secretary of State
8 to conduct business in California and the name and California-based address of CONSULTANT's agent
9 for receipt of service of process.

10 [FOR SOLE PROPRIETOR:] Each individual executing this Agreement on behalf of
11 CONSULTANT, a sole proprietor, hereby covenants, warrants, and represents: (i) that he or she is duly
12 authorized to execute and deliver this Agreement on behalf of such sole proprietor; and (ii) that this
13 Agreement is binding upon such proprietor.

14 X. HOLD HARMLESS:

15 A. CONSULTANT shall hold harmless and indemnify COUNTY, its officers, agents, and
16 employees, against the payment of any and all costs and expenses (including reasonable attorney fees
17 and court costs), damages, claims, suits, losses, and liability for bodily and personal injury to or death
18 of any person or for loss of any property to the extent caused by the negligent or wrongful acts, errors
19 or omissions of CONSULTANT, its officers, agents, and employees, in performing or failing to perform
20 any work, services, or functions under this Agreement.

21 B. COUNTY and CONSULTANT hereby declare their mutual intent to cooperate in the
22 defense of any claim, suit, or other action alleging liability, arising from the negligent performance or
23 failure to perform of any COUNTY contractor or subcontractor in the project. Such cooperation may
24 include an agreement to prepare and present a cooperative defense after consultation with
25 CONSULTANT's professional liability insurance carrier.

26 XI. LIABILITY INSURANCE:

1 A. Prior to commencing the duties under the Agreement with the COUNTY, the
2 CONSULTANT shall furnish the COUNTY, at no additional cost to the COUNTY, certificates for the
3 following insurance policies which shall be kept in force during the term of the Agreement (i.e. until
4 the Agreement is terminated or it expires) and for such additional time as may be specified herein with
5 respect to a particular type of policy.

6 [Lesser limits only on Risk Manager OK; exposure defines]

7 1. Commercial General Liability Insurance or Comprehensive General Liability Insurance,
8 naming the COUNTY as an additional insured, with limits of not less than \$1,000,000 per occurrence
9 with an annual aggregate of \$2,000,000.

10 2. Comprehensive Automobile Liability Insurance with limits for bodily injury of not less
11 than \$250,000 per person, \$500,000 per accident and for property damages of not less than \$50,000,
12 or such coverage with a combined single limit of \$500,000.

13 3. Worker's Compensation insurance policy as required by the California Labor Code.

14 [Professional Liability deletion only on Risk Manager OK]

15 4. Professional Liability Insurance:

16 a. In the minimum amount of at least \$1,000,000 coverage per claim, with an annual
17 aggregate of at least \$2,000,000, and with a deductible not to exceed \$50,000. A deductible greater
18 than \$50,000 will be accepted upon the COUNTY receiving satisfactory, certified information of the
19 CONSULTANT's ability to support such a deductible. The financial ability to support the difference
20 between the \$50,000 and greater deductible amount requested by CONSULTANT shall be guaranteed
21 by any of the following:

22 (1) Cash deposit with a trustee bank.

23 (2) Irrevocable letter of credit issued by a bank for a period sufficient for the
24 COUNTY to determine if there is a claim to be made against the CONSULTANT, e.g. six months
25 after termination of Agreement.

26 (3) Withholding payment under terms of the Agreement for the same period

1 as under Article VII. herein.

2 b. CONSULTANT and subconsultants shall make full disclosure, in writing to the
3 COUNTY, of all pending and open claims and disputes during the course of this Agreement that affect
4 the specified aggregate limits of the Professional Liability Insurance policy.

5 c. Professional Liability Insurance shall extend for a minimum of two (2) years past the
6 date of final payment to CONSULTANT, including the resolution of all claims, disputes, and matters
7 in question regarding the project.

8 d. In the event that CONSULTANT voluntarily changes, or involuntarily changes, due
9 to circumstances beyond its control, its Professional Liability Insurance policy carrier during the course
10 of this Agreement, such new policy shall include prior acts coverage retroactive, at least, to the date
11 of execution of this Agreement. CONSULTANT may, at its option and expense, purchase
12 supplemental or "tail" coverage from the former policy carrier, negotiate a retroactive reporting date
13 with the new policy carrier for claims incurred but not reported as of the date of change in policy
14 carrier, and shall in any event maintain Professional Liability Insurance in a manner that provides
15 continuous coverage to the COUNTY throughout the term of this Agreement, and for a period of two
16 (2) years past the issuance of final payment to the CONSULTANT.

17 e. The CONSULTANT may, at its option and expense and upon approval of the
18 COUNTY, provide specific project professional liability insurance for itself and all sub-consultants for
19 this project, extending from the beginning of project Phase 1 to two (2) years past the issuance of final
20 payment hereunder to the CONSULTANT. This time period specifically includes that time required
21 for the resolution of all claims and disputes.

22 f. The CONSULTANT shall provide a vicarious interest endorsement to its
23 Professional Liability Insurance policy, indemnifying the COUNTY for liabilities, damages and/or
24 judgments, and reasonable attorney's fees and related costs (a) to the proportionate extent caused by
25 the negligent errors, acts or omissions of CONSULTANT and (b) in excess of the deductible obligation
26 and subject to all of the terms, conditions and exclusions of the Professional Liability Insurance policy.

1
2 B. All policies shall be with admitted insurers licensed to do business in the State of California.
3 CONSULTANT shall give COUNTY at least thirty (30) days written advance notice of any expiration,
4 cancellation or reduction in the coverage of any of the aforesaid policies.

5 C. The COUNTY, its officers, agents and employees, individually and collectively, shall be
6 named as an additional insured in Commercial General Liability Insurance or Comprehensive General
7 Liability Insurance, but only insofar as the operations under this Agreement are concerned. Such
8 coverage of COUNTY as additional insured shall apply as primary insurance and any other insurance,
9 or self-insurance, maintained by the COUNTY, its officers, agents, and employees, shall be excess only
10 and not contributing with insurance provided under the CONSULTANT's policies herein.

11 D. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein
12 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
13 Agreement upon the occurrence of such event.

14 XII. OWNERSHIP OF DOCUMENTS: [Complex, various project]

15 A. CONSULTANT understands and agrees that COUNTY shall retain full ownership rights
16 of the drawings and the work-product of CONSULTANT for [the / each] project, to the fullest extent
17 permitted by law. In this regard, CONSULTANT acknowledges and agrees that CONSULTANT's
18 services are on behalf of COUNTY and are "works made for hire," as that term is defined in copyright
19 law, by COUNTY; that the drawings and work-product to be prepared by CONSULTANT are for the
20 sole and exclusive use of COUNTY, and shall be the sole property of COUNTY and its assigns, and
21 the COUNTY and its assigns shall be the sole owner of all patents, copyrights, trademarks, trade
22 secrets and other rights and contractual interests in connection therewith which are developed and
23 compensated solely under this Agreement; that all the rights, title, and interest in and to the drawings
24 and work-product will be transferred to COUNTY by CONSULTANT to the extent CONSULTANT
25 has an interest in and authority to convey such rights; and CONSULTANT will assist COUNTY to
26 obtain and enforce patents, copyrights, trademarks, trade secrets, and other rights and contractual

1 interests relating to said drawings and work-product; that COUNTY shall be and become the owner
2 of such drawings and work product, free and clear of any claim by CONSULTANT or anyone claiming
3 any right through CONSULTANT. CONSULTANT further acknowledges and agrees that COUNTY's
4 ownership rights in such drawings and work product shall apply regardless of whether such drawings
5 or work product, or any copies thereof, are in the possession of CONSULTANT, or any other person,
6 firm, corporation, or entity. For the purpose of this Agreement the terms "drawings and work-product"
7 shall mean all reports and study findings commissioned to develop the design of the project, drawings
8 and schematic or preliminary design documents of the project, certified reproducibles of the original
9 final construction contract drawings of the project, specifications of the project, the approved opinion
10 of probable construction cost of the project, record drawings of the project, as-built plans of the
11 project, and discoveries, developments, designs, improvements, inventions, formulas, processes,
12 techniques, or specific know-how and data generated or conceived or reduced to practice or learning
13 by CONSULTANT, either alone or jointly with others, that result from the tasks assigned to
14 CONSULTANT by COUNTY under this Agreement. COUNTY acknowledges and agrees that details,
15 concepts, ideas, devices, configurations, and designs previously developed or used by CONSULTANT,
16 or developed by CONSULTANT without COUNTY compensation, shall remain the property of
17 CONSULTANT and use is granted to COUNTY only for the specific projects undertaken under this
18 Agreement.

19 B. If the Agreement is terminated during or at the completion of the preliminary design under
20 Article III, a copy of the preliminary design documents shall be submitted by CONSULTANT to the
21 COUNTY, which may use them to complete the project in future phases.

22 C. If the project is terminated at the completion of the construction document phase, certified
23 reproducibles on .003" mylars of the original final construction contract drawings, specifications, and
24 approved opinion of probable construction cost shall be submitted by CONSULTANT to COUNTY.

25 D. Documents, including drawings and specifications, prepared by CONSULTANT pursuant
26 to this Agreement are not intended or represented to be suitable for reuse by COUNTY or others on

1 extensions of the services provided for this project or any other project. Any use of completed
2 documents for other projects and/or any use of uncompleted documents will be at COUNTY's sole risk
3 and without liability or legal exposure to CONSULTANT.

4 E. COUNTY has requested that certain machine-readable information and data ("CADD data")
5 be provided by CONSULTANT under this Agreement. Such CADD data is more specifically described
6 in Article III. CONSULTANT shall not be liable for claims, liabilities or losses arising out of, or
7 connected with (1) the modification or misuse by COUNTY, or anyone authorized by COUNTY, of
8 such CADD data; or (2) decline of accuracy or readability of CADD data due to inappropriate storage
9 conditions or duration; or (3) any use by COUNTY, or anyone authorized by COUNTY, of such CAD
10 data for additions to this project or for the completion of this project by others, or for other projects.

11 XIII. TERMINATION OF AGREEMENT:

12 A. This Agreement may be terminated without cause at any time by the COUNTY upon thirty
13 (30) calendar days written notice. If the COUNTY terminates this Agreement, the CONSULTANT
14 shall be compensated for services satisfactorily completed to the date of termination based upon the
15 compensation rates and subject to the maximum amounts payable agreed to in Article V, together with
16 such additional services satisfactorily performed after termination which are expressly authorized by
17 the COUNTY Representative in order to conclude the work performed to date of termination.

18 B. If the CONSULTANT purports to terminate the Agreement or otherwise refuses to perform
19 pursuant to the Agreement, for reasons other than material breach by the COUNTY, the
20 CONSULTANT shall reimburse the COUNTY, up to a maximum of \$3,500 for the actual expense of
21 issuing a Request For Proposal (RFP), engaging a new CONSULTANT, and the new
22 CONSULTANT's cost in becoming familiar with the previous CONSULTANT's design in addition to
23 any other legal or equitable remedy or expense available to the COUNTY.

24 C. The COUNTY may immediately suspend or terminate this Agreement in whole or in part,
25 where in the determination of the COUNTY there is:

- 26 1. An illegal or improper use of funds;

2. A failure to comply with any term of this Agreement;
3. A substantially incorrect or incomplete report submitted to the COUNTY;
4. Improperly performed service.

D. In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach of this Agreement or any default which may then exist on the part of the CONSULTANT. Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of the CONSULTANT the repayment to the COUNTY of any funds disbursed to the CONSULTANT under this Agreement, which, in the judgment of the COUNTY and as determined in accordance with the procedures of Article IX ("Errors or Omissions Claims and Disputes"), were not expended in accordance with the terms of this Agreement. The CONSULTANT shall promptly refund any such funds upon demand.

E. The terms of this Agreement, and the services to be provided thereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated at any time by giving the CONSULTANT thirty (30) days advance written notice.

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

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THIS DOCUMENT IS CURRENT THROUGH REGISTER 2001, NO. 40, OCTOBER 5, 2001 *

TITLE 2. ADMINISTRATION

DIVISION 6. FAIR POLITICAL PRACTICES COMMISSION

CHAPTER 7. CONFLICTS OF INTEREST

ARTICLE 2. DISCLOSURE

2 CCR 18730 (2001)

18730. Provisions of Conflict of Interest Codes

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Government Code section 87300 or the amendment of a conflict of interest code within the meaning of Government Code section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Government Code sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18100, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees are also specified in Government Code section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Government Code section 87200; and

(C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of financial interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those financial interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the financial interests set forth in a designated employee's disclosure categories are the kinds of financial interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later.

(D) Contents of Leaving Office Statements. Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

3. The address or other precise location of the real property;

4. A statement whether the fair market value of the investment or interest in real property exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(A) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment

or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Government Code Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$320.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$320 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Government Code section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office,
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.
4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of five hundred dollars (\$500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(F) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.
2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans."

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made,

b. The date the last payment of one hundred dollars (\$100) or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$320 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services or 18705.2(c) totaling in value one thousand dollars (\$1,000) or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000-91015. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

¹Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code section 81004.

²See Government Code section 81010 and 2 Cal. Code of Regs. section 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

³For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

AUTHORITY: Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

HISTORY:

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14). Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed i-9-81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (b)(7)(B)l. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 4-6). '
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).
7. Amendment of subsection (b) filed 10-21-88; operative li-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).
9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).
10. Amendment of subsection (b)(5,5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).
11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.
12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b) (8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4- (Register 96, No. 13).
16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1) (B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4-(d) (Register 98, No. 35).
19. Editorial correction of subsection (a) (Register 98, No. 47),
20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).
21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).
22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001, Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, unpublished decision, April 27, 1992 (FPPC regulations only subject to 1974- Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, unpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).